
**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Reexamination of Roaming Obligations of) WC Docket No. 05-265
Commercial Mobile Radio Service Providers)
)
To: The Commission

COMMENTS OF CINGULAR WIRELESS LLC

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SUMMARY

Cingular Wireless LLC (“Cingular”) hereby submits comments urging the elimination of the manual roaming rule and opposing the regulation of automatic roaming agreements. The legal framework governing this proceeding requires the FCC to eliminate rules which have no basis and to refrain from imposing additional regulations absent a demonstrated market failure.

There is no longer any need for the manual roaming rule. The rule has outlived its usefulness. It was developed in the early days of analog cellular service, when there were few competitors and networks had not been built-out. There were three bases for the rule: to promote broad coverage; facilitate low-cost equipment; and eliminate the headstart advantage held by cellular carriers. Today, the headstart advantage is gone. There are numerous CMRS competitors in each market and many carriers offer nationwide service. There also has been a proliferation of automatic roaming and national service plans, as well as the availability of roaming alternatives (such as pre-paid service with low-cost phones). In addition, the rule has been rendered obsolete by modern digital wireless services which are incapable of supporting manual roaming. Accordingly, the rule should be eliminated.

There equally is no need to adopt an automatic roaming requirement. Automatic roaming agreements have proliferated without Commission intervention. Allowing market forces to operate freely (without regulation) has resulted in low roaming rates and near nationwide coverage for many carriers. The imposition of a mandatory automatic roaming requirement would stifle the incentive for carriers to provide facilities-based coverage, innovative rate plans, and better quality roaming services at lower costs. As the Commission has recognized, adoption of an automatic roaming requirement “is inconsistent with our general policy of allowing market forces, rather than regulation, to share the development of wireless services.”

Despite the foregoing, some smaller CMRS carriers claim that roaming regulation is necessary because the amount of roaming traffic they receive has been significantly reduced. They claim that the reduction in traffic is due to “sweetheart” deals between larger carriers. These claims provide no basis for regulation. Smaller carriers are losing roaming traffic for a number of reasons that have no relationship to roaming agreements between large carriers. For example, when Cingular began deploying GSM technology, many small carriers did not. Thus, as Cingular subscribers migrated from TDMA service to GSM service, the amount of TDMA roaming traffic decreased. This was not due to a sweetheart roaming deal, but resulted from CMRS competition that prompted the deployment of more advanced technologies. Roaming traffic that might have gone to a TDMA-based rural carrier now goes to a competing carrier that offers GSM service.

In sum, absent concrete evidence of a widespread CMRS market failure, the Commission should not regulate roaming. Accordingly, the existing manual roaming rule should be eliminated and automatic roaming regulations should not be adopted.

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Cingular Wireless LLC (“Cingular”), in response to the *Notice of Proposed Rulemaking* in the captioned proceeding,¹ hereby submits its comments urging elimination of the manual roaming rule and opposing adoption of automatic roaming regulations. FCC regulation of manual roaming is no longer necessary. The current state of competition and advances in technology have made the rule obsolete. Moreover, adoption of a new automatic roaming rule would be inconsistent with the recognition by Congress and the FCC that regulation should be avoided unless there is a demonstrated failure of market forces to protect the public interest.

I. THE HISTORY OF ROAMING REGULATION

Manual roaming requirements have been around since the establishment of the Cellular Radiotelephone Service. Before any system had been built, the Commission determined that it was important for a subscriber of one cellular carrier to obtain service from another carrier on a temporary basis, without being required to purchase a new mobile handset, when the subscriber

¹ *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, *Notice of Proposed Rulemaking*, FCC 05-160 (rel. Aug. 24, 2005) (“*Notice*”).

was roaming – traveling outside its home market.² Thus, the Commission required all cellular systems to “render service to properly licensed roamers.”³ To accomplish this objective, carriers were required to comply with OET Bulletin 53, which established technical and operational parameters and descriptions of call processing algorithms and protocols to be used by all cellular systems.⁴ OET Bulletin 53 required that all cellular carriers operate using the same technology – analog.

The Commission recognized that a roamer must first register with a “foreign” carrier in order to receive service:

For example, a New York based customer would subscribe to one of the New York cellular systems, and if the customer visited, for example, Chicago, and wished to use cellular service there, the individual would be required to register as a roamer.⁵

² See *Year 2000 Biennial Regulatory Review -- Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services*, WT Docket No. 01-108, *Report and Order*, 17 F.C.C.R. 18401, 18405 (2002). “Roaming” is defined as the situation that occurs when a subscriber (the “roamer”) of one “station or system” travels outside the service area of his or her home system and attempts to obtain service on a temporary basis from another system. See 47 C.F.R. § 22.99; *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket 00-193, *Notice of Proposed Rulemaking*, 15 F.C.C.R. 21628, 21629 (2000) (“2000 NPRM”).

³ 47 C.F.R. § 22.911(b) (1982).

⁴ See *Inquiry into the Use of the Bands 825-845 MHz and 870 MHz and 870-890 MHz for Cellular Communications Systems*, CC Docket No. 79-318, *Report and Order*, 86 FCC 2d 469, 508 (1981).

⁵ See *La Star Tele. Co., Memorandum Opinion and Order*, 4 F.C.C.R. 3777, n.5 (1989); *Amendment of Parts 2 and 22 of the Commission's Rules to Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service*, GEN. Docket No. 87-390, *Notice of Proposed Rulemaking*, 2 F.C.C.R. 6244, n.16 (1987) (“In practice, roamers must generally register with other systems before service can be obtained. Recently, there has been a trend towards use of common identification codes by nearby systems so that roaming can occur without registration.”); *Gencom Incorporated*, CC Docket No. 83-50, *Final Decision*, 56 RR 2d 1597, 1607 (1984) (“We note that all applicants' contentions address the manner in which each proposed system will register roamer traffic in their systems”); *Southern Ohio Tel. Co.*, CC Docket No. 83-316, *Final Decision*, 58 RR 2d 463, ¶ 17 (1985) (noting that initial cellular applicants “propose to provide service to roamers registered with their Cincinnati systems”).

No guidance was provided, however, with regard to the manner in which roamer service should be provided. Thus, carriers proposed a variety of ways to satisfy the rule.⁶

The “roaming” covered by the rule occurred whenever a subscriber to one local cellular system obtained service from a different cellular system, even if the home system and host system were owned and operated by the same company. Eventually, two types of roaming developed — manual and automatic.

Manual roaming requires the roamer to establish a relationship with the host system before making or receiving a call. Although manual roaming initially required a roamer to contact the host system directly, third-party vendors eventually developed products that facilitated manual roaming by allowing roamers to call an 800 number to establish manual roaming. These products were made possible due to the cellular industry’s use of a common air interface (*i.e.*, analog).⁷

Automatic roaming occurs when a subscriber attempts to place or receive a call on a network — the host network — that has a roaming agreement with the subscriber’s home carrier. Under this approach, call placement is automatic once the roamer dials a number. There is no need for the roaming subscriber to interact with the “host” carrier or a clearinghouse.

In 1995, the Commission proposed to extend the manual roaming obligation to PCS and SMR providers.⁸ The Commission recognized, however, that technical issues could hinder the

⁶ See *Celcom Communications Corp.*, CC Docket No. 83-25, *Initial Decision*, 103 FCC 2d 307, 334-358 (1983).

⁷ *Amendment of Parts 2 and 22 of the Commission's Rules to Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service*, GEN. Docket No. 87-390, *Notice of Proposed Rulemaking*, 2 F.C.C.R. 6244, n.16 (1987) (“Recently, there has been a trend towards use of common identification codes by nearby systems so that roaming can occur without registration”).

⁸ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *Second Notice of Proposed Rulemaking*, 10 F.C.C.R. 10666, 10694 (1995) (“*Second NPRM*”).

ability of carriers to offer roaming and sought comment on how roaming could be offered on PCS networks.⁹

Comments were essentially divided into two categories. Incumbent cellular operators who opposed an extension of the manual roaming rule, and carriers with new PCS licenses who supported an extension of the rule as a vehicle for allowing them to more rapidly compete with the incumbent cellular carriers. Not a single rural cellular operator (absent those with new PCS licenses) supported an extension of the manual roaming rule, and many opposed it.¹⁰

After reviewing the record, the Commission determined that roaming was important to the development of PCS systems because it would allow PCS licensees to compete on equal footing with the incumbent cellular operators “during the period in which broadband personal communications services (PCS) systems are being built.”¹¹ Accordingly, the Commission expanded the scope of the cellular manual roaming rule to encompass other services — PCS and SMR — that offered competition with cellular service.¹²

⁹ *Id.* at 10683.

¹⁰ See Comments of Vanguard Cellular Systems, Inc., CC Docket No. 94-54, at 8 (filed June 14, 1995) (“No regulatory action is warranted with respect to CMRS roaming”); Reply Comments of Vanguard Cellular Systems, Inc., CC Docket No. 94-54, at 2-3 (filed July 14, 1995) (roaming regulation unnecessary in a competitive marketplace); Comments of the Rural Cellular Association, CC Docket No. 94-54, at 7 (filed June 14, 1995) (“RCA Initial Comments”) (noting that the Commission should not promulgate rules regarding roaming); *Id.* at 4-6 (“A provider’s decision to offer roaming also should be left to marketplace forces”). One rural carrier — Rural Cellular Association (“RCA”) — urged the Commission to declare that it would be unreasonable for larger carriers to reduce their roaming rates and expect reciprocal rates from other carriers. RCA Initial Comments at 7-8.

¹¹ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *Second Report and Order and Third Notice of Proposed Rulemaking*, 11 F.C.C.R. 9462, 9464 (1996) (“*Roaming Second Report*” or “*Third NPRM*”).

¹² *Id.* This requirement was codified in Section 20.12 of the Commission’s rules which states:

Each carrier . . . must provide mobile radio service upon request to all subscribers in good standing to the services of any carrier . . . , including roamers, while such subscribers are located within any

(continued on next page)

The manual roaming rule was viewed as “minimally intrusive because it does not require CMRS carriers to reconfigure their systems to support technically incompatible roaming.”¹³ Moreover, the Commission recognized that “market forces should eliminate the need for any explicit roaming regulations once broadband PCS licensees have built out their networks.”¹⁴

At the same time, the Commission sought additional comment on whether a sunset date should be established for the manual roaming rule or whether an automatic roaming rule should be adopted. With regard to automatic roaming, the Commission made clear that “consideration of automatic roaming issues is grounded in a belief that any action we might take would sunset five years after the last group of initial licenses for currently allotted broadband PCS spectrum is awarded.”¹⁵ The Commission also noted that:

Imposing such a requirement would be inconsistent with our general policy of allowing market forces, rather than regulation, to shape the development of wireless services. Similarly, it could be viewed as at odds with Congress’ goal in adopting the Telecommunications Act of 1996 of creating a “pro-competitive, de-regulatory national policy framework” for the United States telecommunications industry.¹⁶

portion of the licensee’s licensed service area . . . if such subscribers are using mobile equipment that is technically compatible with the licensee’s base stations.

47 C.F.R. § 20.12.

¹³ 2002 Biennial Regulatory Review, WT Docket No. 02-310, *Wireless Telecommunications Bureau Staff Report*, 18 F.C.C.R. 4243, 4287 (2002) (“2002 Staff Report”); *Federal Communications Commission 2004 Biennial Regulatory Review*, WT Docket No. 04-180, *Wireless Telecommunications Bureau Staff Report*, 20 F.C.C.R. 124, 169 (2005) (“2004 Staff Report”); see *Roaming Second Report*, 11 F.C.C.R. at 9470 (stating that the manual roaming rule does not require licensees to modify their systems).

¹⁴ *Roaming Second Report*, 11 F.C.C.R. at 9462.

¹⁵ *Id.*

¹⁶ *Id.* at 9477.

Incumbent cellular carriers, including rural carriers, again opposed the imposition of an automatic roaming requirement. RCA criticized re-opening the automatic roaming debate¹⁷ and stated:

[N]o regulatory action is required because there is no evidence or indication of anticompetitive activity.

* * *

RCA agrees with . . . the observation that the successful development of the cellular roaming arrangements demonstrates that regulatory oversight is not necessary at this time.

The Rural Telecommunications Group (“RTG”), a trade association representing the “interests of rural telephone companies in wireless technologies”¹⁸ vehemently opposed the adoption of an automatic roaming requirement. In its comments in response to the *Third NPRM*, RTG stated:

Under the pro-competitive, deregulatory environment which Congress contemplates, the Commission first should rely on market forces before resorting to government intervention and regulation. Where market forces are sufficient to promote competition and new and innovative services, the Commission should not intercede, but rather should refrain from regulation unless and until the marketplace proves ineffective. *Only in light of persuasive evidence that there is wide-spread anticompetitive behavior with respect to CMRS roaming, should the Commission impose industry-wide regulation.*¹⁹

* * *

Regulation of automatic roaming would be completely inconsistent with this pro-competitive, deregulatory framework as it would essentially require the Commission to mandate what automatic roaming services a carrier provides and to whom. . . . Indeed, in the cellular industry[,] market forces drove the creation of extensive roaming networks and services without government

¹⁷ Comments of the Rural Cellular Association, CC Docket No. 94-54 at 2 (filed Oct. 4, 1996) (“the award of Personal Communications Service licenses apparently has resulted in the evolution of some parties views on the matter”).

¹⁸ *Id.* at 3.

¹⁹ *Id.* (emphasis added).

intervention. Accordingly, *market forces will continue to ensure that CMRS providers reach such agreements voluntarily.*²⁰

RTG also maintained that adoption of an automatic roaming requirement “would harm small and rural CMRS providers.”²¹

In 1998, RTG submitted comments to update the record and stated:

In the fifteen months since [its initial] comments were filed, there has been no evidence that the marketplace has proved ineffective in promoting competitive behavior with respect to CMRS roaming. RTG members have not been denied roaming agreements by larger CMRS carriers. . . . [T]he imposition of an automatic roaming requirement would impose significant burdens on rural CMRS providers and would distort market forces, creating a disincentive for such providers to expend their competitive efforts in the creation of unique roaming packages for their customers. The costs imposed on rural CMRS providers and their customers, as well as the FCC, far outweigh the speculative evidence regarding the *potential* for anticompetitive behavior with respect to CMRS roaming.²²

The following year, RTG *again* opposed the imposition of an automatic roaming requirement and emphasized that sheer conjecture about potential problems is insufficient to justify regulation.²³ RTG also maintained that such a requirement could not be justified because “CMRS carriers do not possess market power over roamers in their markets. Cellular roamers generally have the choice to utilize either of two cellular networks.”²⁴

In 2000, the Commission terminated the 1996 proceeding because “significant advances in technology and the rapid expansion of the CMRS market in the intervening years” had

²⁰ *Id.* at 4, 5 (emphasis added).

²¹ *Id.* at 7.

²² Comments of the Rural Telecommunications Group, CC Docket No. 94-54 at 2-3 (filed Jan. 5, 1998) (emphasis in original).

²³ Comments of the Rural Telecommunications Group, CC Docket No. 94-54 at 2-3 (filed Jan. 20, 1999) (“RTG 1999 Comments”).

²⁴ *Id.* at 2.

rendered the record stale.²⁵ Thus, despite overwhelming opposition to the adoption of roaming regulations, the Commission again sought comment on the need for automatic or manual roaming regulations given the competitive state of the CMRS industry.²⁶ The Commission stated, however, that roaming regulations are necessary “[o]nly where market forces alone are not sufficient to ensure the widespread availability of competitive roaming services and where roaming is technically feasible without imposing unreasonable costs on CMRS providers.”²⁷

Most commenters, including some rural carriers such as USCC, continued to oppose adoption of automatic roaming regulations.²⁸ RCA reiterated its opposition and emphatically agreed with the Commission’s tentative conclusion that it “should not adopt an automatic roaming rule unless ‘it is clear that providers’ current practices are unreasonably hindering the operation of the market to the detriment of consumers.”²⁹ RCA noted that “[n]o evidence exists that current practices present a significant problem.”³⁰

In 2002, as part of its Biennial Review, the Wireless Telecommunications Bureau reviewed the manual roaming rule and noted that manual roaming imposes high fees “and has become an option of last resort due to its cumbersome registration process and difficulty of use.”³¹ Moreover, the WTB observed that:

Market forces are working to make roaming services, in particular automatic roaming, widely available and increasingly less

²⁵ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *Third Report and Order and Memorandum Opinion and Order on Reconsideration*, 15 F.C.C.R. 15975, 15976, 15983 (2000).

²⁶ *See 2000 NPRM*, 15 F.C.C.R. at 21628.

²⁷ *Roaming Second Report*, 11 F.C.C.R. at 9467.

²⁸ *See Reply Comments of the United States Cellular Corporation*, WT Docket No. 00-193 (filed Feb. 5, 2001).

²⁹ *Comments of the Rural Cellular Association*, WT Docket No. 00-193, at 3 (filed Jan. 5, 2001).

³⁰ *Id.*

³¹ *2002 Staff Report* 18 F.C.C.R. at 4287; *accord 2004 Staff Report*, 20 F.C.C.R. at 124.

expensive. Competition in the provision of roaming services has become increasingly competitive over time. All the major nationwide carriers as well as many regional and small carriers offer nationwide or nearly nationwide plans and wide-area, single-rate calling plans that include roaming service to their subscribers at no additional charge. Buildout is widespread and continuously expanding. Most cellular carriers have reached automatic roaming agreements among themselves . . .

[S]taff believes that the competitive developments discussed above warrant consideration of whether the [manual roaming] rule remains necessary in the public interest as a result of meaningful competition between service providers.³²

In 2004, RTG filed a request urging the Commission to adopt an automatic roaming requirement despite its prior staunch opposition to such a requirement.³³ RTG claimed that recent industry consolidation was the basis for its changed position.³⁴ This claim was made even though there were more operating CMRS providers in 2004 than there were when RTG claimed regulation was unnecessary due to competitive conditions.³⁵

In August 2005, the Commission again terminated its consideration of roaming issues because the record had become stale.³⁶ Largely in response to the efforts of RTG and a few other rural carriers, however, the Commission initiated the instant proceeding again seeking

³² 2002 Staff Report, 18 F.C.C.R. at 4288.

³³ See Petition of the Rural Telecommunications Group for Commission Action, WT Docket No. 00-193 (filed Nov. 1, 2004) (“RTG Petition for Commission Action”).

³⁴ *Id.* at 1-2.

³⁵ In 1996, there were two cellular providers in each market and PCS was just being launched. Thus in the vast majority of markets, there were only two CMRS providers. See *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Second Report*, 12 F.C.C.R. 11266, 11282 (1997). In 2004, 97 percent of the total U.S. population lived in counties with access to three or more different operators offering mobile telephone service and 93 percent of the total U.S. population lived in counties with access to four or more different operators offering mobile telephone service. See *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 05-71, *Tenth Report*, FCC 05-173, at Appendix A, Table 5 (rel. Sept. 30, 2005) (“*Tenth CMRS Competition Report*”).

³⁶ Notice at ¶ 1.

comment on (i) whether the existing manual roaming rule should be retained, and (ii) whether automatic roaming regulations are necessary

II. THE MANUAL ROAMING RULE SHOULD BE ELIMINATED

A. The Rule is Unnecessary Given the Competitive State of the CMRS Market

The Commission has consistently found that roaming regulations are necessary “[o]nly where market forces alone are not sufficient to ensure the widespread availability of competitive roaming services and where roaming is technically feasible without imposing unreasonable costs on CMRS providers.”³⁷ To date, market forces have ensured the widespread availability of roaming. There has been a proliferation of automatic roaming agreements and there is no evidence that roaming services are unavailable.

When the Commission originally adopted its roaming rule, only two cellular providers were envisioned for each market and there was little facilities-based competition. Given the nascent state of the industry, the absence of significant economies of scale, and limited competition, roaming rates were high. As the Commission recognized in the *Fourth CMRS*

³⁷ Notice at ¶ 8 (citing *Roaming Second Report*, 11 F.C.C.R. at 9467). See *Southwestern Bell Mobile Systems, Inc., Petition for a Declaratory Ruling regarding the Just and Reasonable Nature of, and State Challenges to, Rates Charged by CMRS Providers when Charging for Incoming Calls and Charging for Calls in Whole-Minute Increments, Memorandum Opinion and Order*, 14 F.C.C.R. 19898 (1999); *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, GN Docket 93-252, *Second Report and Order*, 9 F.C.C.R. 1411, 1478, 1478-79 (1993) (“*CMRS Second Report and Order*”); *Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, *Third Report and Order*, 9 F.C.C.R. 7988, 8105 (1994); *1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers*, WT Docket No. 98-205, *Report and Order*, 15 F.C.C.R. 9219, 9230-31 (1999); *Third NPRM*, 11 F.C.C.R. at 9464 (noting that “market forces should eliminate the need for any explicit roaming regulations once broadband PCS licensees have built out their networks”); *Id.* at 9477 (noting that adoption of automatic roaming rules could be at odds with the Commission’s “general policy of allowing market forces, rather than regulation, to shape the development of wireless”).

Competition Report, “roaming was a very lucrative part of [cellular] operators’ businesses, with prices typically ranging between \$0.50 and \$1.00 per minute.”³⁸

The current CMRS market bears little resemblance to the initial cellular duopoly. The *Tenth CMRS Competition Report* recently noted that more than 93 percent of the total U.S. population lives in counties with access to four or more different operators offering mobile telephone service.³⁹ In 2000, 88 percent of the population had access to 3 or more providers.⁴⁰ By 2004, nearly 88 percent of the population had access to 5 or more wireless providers.⁴¹ Thus, even with recent consolidation, the market remains highly competitive. As the Commission concluded in the *Tenth CMRS Competition Report*, no CMRS provider “has a dominant share of the market, and the market continues to behave and perform in a competitive manner.”⁴²

As a result of the increased competition, roaming rates have plummeted⁴³ and many carriers no longer pass along roaming charges to their subscribers. Manual roaming has given way to a proliferation of market-based automatic roaming agreements. Cingular has entered into more than 100 automatic roaming agreements with carriers. These agreements are negotiated between carriers who are incited to provide the best quality roaming services available at the cheapest price. These agreements serve multiple purposes. They close coverage gaps in network coverage. Even the nationwide carriers need roaming agreements to fill in coverage gaps. These

³⁸ *Annual Report and Analysis of Competitive Market Conditions with Respect to CMRS, Fourth Report*, FCC 99-136, at 23 (rel. June 24, 1999)(“*Fourth CMRS Competition Report*”).

³⁹ See *Tenth CMRS Competition Report* at Appendix A, Table 5 (rel. Sept. 30, 2005).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*; see *Orloff v. Vodafone, Memorandum Opinion and Order*, 17 F.C.C.R. 8987 (2002) (finding CMRS market forces sufficient to protect consumers).

⁴³ See *Tenth CMRS Competition Report* at ¶ 154 (noting that “there is ample evidence of a sharp decline in mobile telephone prices in the period since the launch of PCS service. One analyst estimated that the average per-minute cost of wireless calling plunged over 65 percent in the past four years alone.”).

agreements also allow carriers to negotiate minimum technical and feature standards to ensure that their customers have the same features where ever they travel. Moreover, automatic roaming agreements provide additional revenue opportunities and, thus, parties have economic incentives to enter into these agreements. For example, Cingular generally will enter into automatic roaming agreements with a carrier even if the carrier's coverage would not expand Cingular's coverage because the agreement will incrementally increase roaming revenue. These mutually-beneficial agreements were generated by market conditions, rather than regulatory intervention. As the Commission has stated, "market forces are working to make roaming services, in particular automatic roaming, widely available and increasingly less expensive."⁴⁴ Thus, there is no reason to retain the manual roaming rule.

B. The Manual Roaming Rule is Obsolete

1. The Objectives Behind the Manual Roaming Rule Already Have Been Achieved

The Commission has recognized that any "roaming regulation may impose significant costs and burdens" and, therefore, any such regulation must be narrowly tailored to accomplish specific objectives.⁴⁵ The manual roaming rule was adopted for two reasons — to promote the availability of wireless service nationwide and to ensure that customers did not have to purchase expensive CPE in order to make wireless calls outside their home markets.⁴⁶ Subsequently, the rule was extended to cover newer CMRS entrants, such as PCS licensees, to minimize the headstart advantage held by the incumbent cellular operators.⁴⁷ At the same time, however, the

⁴⁴ 2002 Staff Report, 18 F.C.C.R. at 4287.

⁴⁵ Roaming Second Report, 11 F.C.C.R. at 9471.

⁴⁶ See *Inquiry into the Use of the Bands 825-845 MHz and 870 MHz and 870-890 MHz for Cellular Communications Systems*, CC Docket No. 79-318, Report and Order, 86 FCC 2d 469, 508 (1981).

⁴⁷ Roaming Second Report, 11 F.C.C.R. at 9470.

Commission proposed to sunset the manual roaming requirement five years after the initial PCS licenses were awarded:

We believe that once broadband PCS providers' buildout periods are completed, sufficient wireless capacity will be available in the market and, as a result, any roaming regulations, whether manual or automatic, likely will become superfluous. We believe that, given the availability of sufficient capacity, a carrier would not have either the incentive or the ability to unreasonably deny manual roaming to an individual subscriber or to unreasonably enter into an automatic roaming agreement with another CMRS provider, because some other carrier in its service area would be willing to do so.⁴⁸

Each of the objectives of the manual roaming rule now has been accomplished.⁴⁹ The headstart objective is no longer an issue because five years have elapsed since the conclusion of the initial broadband PCS auctions and wireless service is available from multiple carriers virtually anywhere in the United States.

The goal of ensuring that wireless service would be available nationwide also has been achieved. There are facilities-based carriers offering service in all markets, with multiple carriers offering nearly nationwide service. Smaller carriers also are able to offer nationwide coverage through automatic roaming agreements, which are commonplace.

The manual roaming rule also is no longer necessary to keep CPE costs from acting as a barrier to obtaining service when a customer travels outside its home network. Automatic roaming agreements are widespread and obviate the need for a roamer to purchase special CPE.

⁴⁸ *Third NPRM*, 11. F.C.C.R. at 9479.

⁴⁹ *2004 Staff Report* at 45-46 (noting that the goals of reasonable consumer costs and seamless, nationwide service have been substantially achieved for most consumers).

Moreover, as the Commission has recognized, manual roaming was an “option of last resort” due to its cost, difficulty of use, and cumbersome registration process.⁵⁰ Today, there are other less cumbersome options available to consumers when traveling outside their home market. For example, the availability of “disposable” phones and prepaid plans are often less costly and more convenient than manual roaming.

Under the manual roaming rule, a wireless subscriber that contemplated traveling beyond its home market was required to contact a local wireless provider in the area the subscriber would be traveling. As described below, this process was extremely cumbersome.

- The first step in obtaining roaming service on a manual basis was the identification of a local service provider. This need led to the publication of various books, such as “The Cellular Telephone Directory,” that identified the service providers in each market.⁵¹ Once a service provider was located, the roamer was required to register for roaming service.
- The registration process required the roamer to supply credit card information and agree to credit card billing. There was a costly activation fee (in many cases \$20 or more), a daily roaming fee (in many cases \$3 or more), and per minute fees that approached \$1 per minute. In most areas, this registration process was possible only during limited business hours. Registration often was not possible over the weekend and, in some areas, registration was required at least 24 hours prior to the desired service date.
- Finally, although it was possible for the roamer to utilize its existing CPE, modifications often were necessary. The roamer was required to ensure that the handset was set to utilize the appropriate frequencies. This process was accomplished by reference to the handset manual, by taking the phone to a service center operated by the roamer’s home carrier, or by taking the phone to the roaming carrier’s service center. Once the roamer returned home, the process had to be reversed.

In contrast to the cumbersome and expensive initial manual roaming procedures, it is easy and inexpensive for a customer to obtain access to alternative service for temporary use in

⁵⁰ 2002 Biennial Regulatory Review, WT Docket No. 02-310, *Wireless Telecommunications Bureau Staff Report*, 18 F.C.C.R. 4243 (2002) (“2002 Staff Report”); accord 2004 Staff Report 20 F.C.C.R. at 168-169.

areas not served by the customer's own carrier. This can readily be obtained in the form of prepaid wireless service, which is readily available online or from a variety of retail stores.

Instead of consulting a manual roaming directory that is out of date as soon as it is printed, a customer can go online to identify a prepaid plan covering any given area. Prepaid plans are offered by many of the nationwide carriers as well as smaller carriers and "virtual network" operators or resellers.⁵²

Inexpensive "disposable" phones with prepaid service from a variety of carriers can be purchased from retail establishments or online. Many electronics retailers, such as Circuit City, Best Buy, and Radio Shack, offer prepaid service both in their stores and on their websites, with coverage maps demonstrating where service is available. Inexpensive prepaid phones and service can also be purchased at general retail outlets ranging from convenience stores to Wal-Mart and Costco, at kiosks in malls, and from the retail sales outlets of large and small wireless operators. Disposable phones can be purchased with 40 minutes of airtime for less than \$20,⁵³ and "refills" of prepaid service is available for less than \$0.25 per minute. While manual roaming was market-specific, pre-paid plans cover broad service areas. The availability of prepaid service thus represents an attractive service alternative to manual roaming, eliminating any continued need for a manual roaming requirement.

⁵¹ Steven Brown, *The Cellular Telephone Directory: Your Complete Guide to All Cellular Telephone Service in North America*, Telecom Publishing (1990).

⁵² For example, prepaid service is available from Verizon, Boost, Virgin, T-Mobile, Liberty Wireless (Sprint), Tracfone, Tri-County Telephone Cooperative (Alltel).

⁵³ See TracFone Wireless Inc., TracFone Store at <http://www.tracfone-orders.com/direct/tr/phonelist.jsp?tech=TOGSM4&AID=1038777&VID=34225904&VC=1&COM=YES&CD=45&techzip=22039>.

Each of the predicates for the manual roaming rule has been removed and it is well established that rules which no longer have a basis are invalid.⁵⁴ Thus, the manual roaming rule should be eliminated.

2. Manual Roaming is Not Technically Possible Over Networks Utilizing Many Advanced Digital Technologies

When the Commission initially adopted the cellular manual roaming rule, carriers were utilizing a single analog technology. Over time, new technologies were developed and carriers began deploying different digital technologies. Thus, when the cellular roaming rule was extended to other CMRS providers in 1996, the Commission recognized that manual roaming may not be possible over certain networks and air interfaces.⁵⁵ The Commission even questioned whether roaming would be possible over PCS networks because it was unclear what technologies would be utilized.⁵⁶

GSM is a digital air interface that is widely used in the CMRS industry and which does not support manual roaming.⁵⁷ Given the inability of networks utilizing GSM (and potentially other digital technologies) to accommodate manual roaming, the existing roaming rule has little utility and should be eliminated.

Prior to the development of GSM and other advanced digital air interfaces, networks had the capability to register individual roamers on an NPA/NXX basis. This functionality allowed

⁵⁴ See *Geller v. FCC*, 610 F.2d 973 (D.C. Cir. 1979) (noting that a statute or rule may become invalid if the underlying predicate disappears).

⁵⁵ *Second NPRM*, 10 F.C.C.R. at 10694; see *Motorola, Inc., Order*, 16 F.C.C.R. 8451 (2001) (noting that roaming is not available over iDEN networks operating in dispatch mode); *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Service, Seventh Report*, 17 F.C.C.R. 12985, 13018 (2002) (noting that roaming is not available on Leap's CMRS networks) ("*Seventh CMRS Competition Report*").

⁵⁶ *Second NPRM*, 10 F.C.C.R. at 10694. Thus, the Commission's rules clearly state that manual roaming is required only where it is technically feasible. 47 C.F.R. § 20.12(c).

⁵⁷ It is Cingular's understanding that other digital technologies also may be unable to accommodate manual roaming.

carriers to access their switch and create a translation that allowed roamers to access their networks on an individual basis. Ultimately, translations were developed for TDMA and AMPS networks that automatically diverted calls from roamers not covered by an automatic roaming agreement to a third-party vendor that established financial and payment terms with the roamers. Thus, TDMA and AMPS networks were able to recognize the presence of roamer handsets.

GSM and other advanced digital technologies do not have this capability. These networks were designed to allow roamer registration/authentication on the basis of Mobile Country Codes (“MCC”) and Mobile Network Codes (“MNC”), rather than on an NPA/NXX basis. Under this approach, roaming is possible only if the MCC and MNC associated with the roamer’s home network have been loaded into the home location register (“HLR”) associated with the visited network. Such loading occurs only pursuant to an automatic roaming agreement between the home and visited carriers; otherwise it would be impossible to collect the roaming charges.

Once Cingular has an automatic roaming agreement with another carrier, it loads the carrier’s MCC and MNC into its GSM HLR to allow *all subscribers* associated with the carrier to roam on Cingular’s network. If a carrier’s MCC and MNC are not loaded into Cingular’s GSM switch, however, roaming is not possible. A roamer’s handset simply cannot be authenticated if the home system’s MCC and MNC have not been loaded into the visited system’s HLR.⁵⁸ Thus, a handset is not compatible with the network if its home carrier’s MCC/MNC combination is not present in the HLR and, as a result, is not capable of obtaining roaming service.

⁵⁸ Nevertheless, such a roamer can complete 911 calls because such calls do not require authentication.

The Commission's rules do not require manual roaming where it is not technically feasible.⁵⁹ Thus, given the growth and widespread deployment of digital networks that are incapable of providing manual roaming, the rule should be eliminated.

III. ADOPTION OF AN AUTOMATIC ROAMING RULE WOULD BE CONTRARY TO THE PUBLIC INTEREST

Cingular opposes adoption of a mandatory automatic roaming rule. As the Commission previously has recognized, automatic roaming regulations should be imposed only if “*it is clear that providers' current practices are unreasonably hindering the operation of the market to the detriment of consumers.*”⁶⁰ This showing of market failure cannot be made rationally given the competitive state of the CMRS market today.

Despite the tremendous increase in competition since adoption of the original manual roaming rule and the corresponding reduction in roaming rates, some small CMRS carriers now claim that roaming regulation is necessary because the amount of roaming traffic they receive has been significantly reduced.⁶¹ They claim that the reduction in traffic is due to “sweetheart” deals between larger carriers.⁶² These claims are misleading and provide no basis for regulation.

Smaller carriers are losing roaming traffic for a number of reasons that have no relationship to roaming agreements between large carriers. For example, when Cingular began replacing its legacy TDMA technology with GSM technology, many small carriers did not. Thus, as Cingular subscribers migrated from TDMA service to GSM service, the amount of

⁵⁹ As a condition of Cingular's merger with AT&T Wireless Services, Inc., the Commission prohibited Cingular from taking affirmative steps to prevent its customers from manually roaming on other carriers' networks. *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket Nos. 04-70, 04-254, 04-323, *Memorandum Opinion and Order*, 19 F.C.C.R. 21522, 21604 (2004) (“*Cingular/AWS Merger Order*”). As discussed above, to the extent Cingular's subscribers are unable to manually roam on other GSM networks, it is due to technical infeasibility.

⁶⁰ 2000 NPRM, 15 F.C.C.R. at 21635-36.

⁶¹ See Notice at ¶ 39.

TDMA roaming traffic decreased. This was not due to a “sweetheart” roaming agreement, but instead resulted from vigorous CMRS competition that prompted the deployment of more advanced technologies. Roaming traffic that might have gone to a TDMA-based rural carrier now goes to a competing carrier that offers GSM service.

Similarly, smaller carriers see a reduction in roaming traffic when larger operators who were formerly their roaming partners expand their own network coverage into the areas served by the smaller carriers, either by acquiring licenses to cover such areas or by “partnering” with another carrier to provide integrated in-network or extended network service.⁶³ Although this may decrease profits for the smaller carrier, network expansion benefits consumers by increasing competition and driving down costs, as well as improving the services and functionalities available.⁶⁴

One of the principal proponents of an automatic roaming requirement is a trade association — RTG — representing a few rural carriers.⁶⁵ As discussed above, this group previously opposed adoption of an automatic roaming requirement when it was suggested by new CMRS entrants. In fact, RTG claimed that it would be inappropriate to adopt such a requirement based on mere speculation.⁶⁶ RTG now urges the Commission to do just that.⁶⁷ RTG has provided no evidence that the marketplace is working ineffectively or that consumers

⁶² *Id.*

⁶³ *Accord, Tenth CMRS Competition Report* at ¶ 128.

⁶⁴ *See, e.g., Applications of SBC Communications Inc. and BellSouth Corporation*, 15 F.C.C.R. 25459, 25480 (2000) (“*BellSouth/SBC Order*”); *Cingular/AWS Merger Order*, 19 F.C.C.R. at 21604.

⁶⁵ *See generally*, Petition of the Rural Telecommunications Group for Commission Action, WT Docket No. 00-193 (filed Nov. 1, 2004) (“RTG Petition”).

⁶⁶ *See* Comments of the Rural Telecommunication Group, CC Docket No. 94-54 at 4 (filed Oct. 4, 1996).

⁶⁷ *See* RTG Petition at 1-8.

are being harmed.⁶⁸ The reason for RTG's positional flip-flop is simple — the introduction of PCS increased competition and drove roaming rates down. Once the cellular duopoly enjoyed by RTG's members was eliminated by the introduction of PCS competition, rural carriers no longer had the power to dictate roaming rates and terms. When the terms and conditions being offered by a rural carrier were unacceptable, there now were other options. As a result, roaming rates dropped substantially.

This drop in roaming rates was not due to recent consolidation or market power held by large CMRS carriers. To the contrary, carriers always have had an incentive to decrease roaming rates in order to increase usage. This dynamic operated even before the entry of new PCS competitors and recent mergers. Thanks to the Commission's reliance on market forces and its introduction of additional service providers to compete in the marketplace, consumers now enjoy both widespread roaming availability and low roaming rates. Low inter-carrier roaming rates have allowed many carriers to offer one-rate plans that allow subscribers to place calls outside their home markets without incurring roaming fees.

The Commission should reject arguments made by some smaller carriers that they should be entitled to charge higher roaming rates.⁶⁹ Competitive forces in the CMRS marketplace establish the acceptable roaming rate for carriers and consumers. The Commission should not reverse its long-standing policy of relying on market forces and take steps to somehow insulate certain carriers from market forces. As the Commission has noted, the analysis of roaming

⁶⁸ *Id.*

⁶⁹ See RCA Initial Comments at 7-8; See also, Comments of Leaco Rural Telephone Cooperative, Inc., WT Docket No. 05-71, at 2-6 (filed March 28, 2005); Comments of Public Service Communications, WT Docket No. 05-71, at 6-8 (filed March 28, 2005); Comments of Artic Slope Telephone Association, WT Docket No. 05-71, at 3-6 (filed March 28, 2005); Comments of Mid-Tex Cellular Ltd., WT Docket No. 05-71, at 2-5 (filed March 28, 2005); Comments of Great Lakes of Iowa, Inc. WT Docket No. 05-71, at 2-6 (filed March 28, 2005).

obligations must focus on consumers, not private carriers.⁷⁰ If the Commission were to intervene and skew the market in favor of some particular class of carriers, thereby allowing them to raise the roaming rates they charge other carriers, the latter carriers would ultimately have to pass those increased costs on to their customers, either by increasing their overall rates or by deviating from the one-rate plans that have served the public so well and instead charging their customers area-specific roaming rates. Obviously, this protectionist stance would not serve the public interest.

The Commission also should reject RTG's proposal to require nationwide carriers to provide automatic roaming "at reasonable symmetrical rates as a 'check' against the abuse of market power by large carriers where they dominate the market."⁷¹ RTG has not demonstrated that any such abuses are occurring or that there has been a market failure. The Commission should not disrupt the workings of the highly competitive CMRS market based on pure speculation. RTG itself has previously warned that sheer conjecture about potential problems is insufficient to justify regulation.⁷²

There is no evidence of a widespread inability of small carriers to obtain roaming agreements, nor is there any evidence that nationwide carriers have market power. No Section 208 complaints have been filed accusing carriers of unjust or unreasonable roaming practices. Moreover, the Commission repeatedly has determined that the CMRS marketplace is

⁷⁰ See *2000 NPRM*, 15 F.C.C.R. at 21635-36; *accord Prime Time Access Rule*, MM Docket No. 94-123, *Report and Order*, 11 F.C.C.R. 546, 555, 562-63 (1995) (noting that the FCC's task is "to assess the extent to which [the prime time access rule] serves the Commission's 'public interest' mandate to maximize consumer welfare, as opposed to merely protecting individual competitors in the communications industry"); *AT&T Communications Tariff F.C.C. Nos. 1 and 2*, CC Docket No. 86-81, *Memorandum Opinion and Order*, 2 F.C.C.R. 548, 551 (1987) (noting that Commission regulations should not protect individual competitors).

⁷¹ Notice at ¶ 43.

⁷² See RTG 1999 Comments at 2-3.

competitive⁷³ and has required divestitures in recent mergers to prevent carriers from being able to obtain market power.⁷⁴ In fact, it has determined that “the continued presence of two nationwide and numerous regional carriers using [GSM] technology after the merger should be sufficient to ensure the continued availability of roaming services at competitive rates to . . . potential roaming partners.”⁷⁵ Absent concrete evidence of a widespread market failure, roaming regulation is not warranted. It would be inappropriate to adopt burdensome regulations for an entire industry based on a few alleged, but unidentified, instances where small carriers are unable to obtain automatic roaming agreements.

A. An Automatic Roaming Requirement Would Interfere With the Development and Maintenance of Innovative Rate Plans

The current inquiry into the necessity of roaming regulations was triggered by concerns that recent mergers would adversely impact the availability of roaming.⁷⁶ Despite industry consolidation, however, the Commission has determined that “there is effective competition in the CMRS marketplace.”⁷⁷ It also found that:

consolidation does not always result in a negative impact on consumers. Consolidation in the mobile telecommunications market may enable carriers to achieve certain economies of scale and increased efficiencies compared to smaller operators. If the cost savings generated by consolidation give the newly enlarged carrier the ability and incentive to compete more aggressively,

⁷³ See, e.g., *Tenth CMRS Competition Report* at ¶ 2; *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 04-111, *Ninth Report*, 19 F.C.C.R. 20597, 20600 (2004); *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 02-379, *Eighth Report*, 18 F.C.C.R. 14783, 14787 (2003).

⁷⁴ *Cingular/AWS Merger Order*, 19 F.C.C.R. at 21620-25; *Applications of Western Wireless Corporation and Alltel Corporation*, WT Docket No. 05-50, *Memorandum Opinion and Order*, FCC 05-138 at ¶¶ 159-169 (rel. July 19, 2005). Ironically, RTG previously took the position that there was no need for regulation where there were only two competing carriers in a market. See RTG 1999 Comments at 2.

⁷⁵ *Cingular/AWS Merger Order*, 19 F.C.C.R. at 21590.

⁷⁶ See Notice at ¶¶ 18-30.

⁷⁷ *Tenth CMRS Competition Report* at ¶ 2.

consolidation could result in lower prices and new and innovative services for consumers.⁷⁸

CMRS carriers compete based on rates, coverage, innovative features, and service quality.⁷⁹ CMRS carriers must develop “strategies designed to differentiate their brands based on attributes such as network coverage and service quality.”⁸⁰ The imposition of a mandatory automatic roaming requirement would interfere with market forces, stifle innovation, and undermine competition. As the Commission has recognized, a carrier’s success “should be driven by technological innovation, service quality, competition-based pricing decisions, and responsiveness to consumer needs — and not by strategies in the regulatory arena.”⁸¹ Moreover, adoption of an automatic roaming requirement is inconsistent with the Commission’s “general policy of allowing market forces, rather than regulation, to share the development of wireless services.”⁸²

The Commission has stated that the rollout of differentiated pricing plans indicates that the CMRS marketplace is competitive.⁸³ The Digital One Rate plan introduced by AT&T Wireless, now Cingular, was cited as a notable example of “an independent pricing action that altered the market to the benefit of consumers.”⁸⁴ This plan eliminated roaming and long distance charges for subscribers and was copied by numerous competitors. Such plans are now the norm, with virtually all carriers offering a variety of single-rate plans.

⁷⁸ *Id.* at ¶ 55. Moreover, consolidation has not had a significant impact on competition in rural areas. As noted in the *Tenth CMRS Competition Report*, “The number of competitors in the less densely populated counties is unchanged from the Ninth Report.” *Id.* at ¶ 94.

⁷⁹ *See id.* at ¶¶ 3, 96-138.

⁸⁰ *Id.* at ¶ 3.

⁸¹ *CMRS Second Report and Order*, 9 F.C.C.R. at 1420.

⁸² *Third NPRM* at ¶ 27.

⁸³ *See Tenth CMRS Competition Report* at ¶ 97.

⁸⁴ *Id.*

Adoption of an automatic roaming requirement may result in the elimination of single-rate and similar plans and undermine the incentives for differentiated pricing plans. As discussed above, the CMRS marketplace is competitive and automatic roaming agreements have proliferated without Commission intervention. Single-rate plans were a direct result of this environment. Competition drove down roaming rates to such a low level that carriers were willing to absorb these costs into their basic rate structure. Carriers across the country had market-based incentives to work out automatic roaming arrangements with other operators providing quality service at a reasonable price in areas that were not already served by their networks. This allowed the national carriers to fill in gaps in their in-network and expanded-network coverage maps, and conversely gave local independent carriers access to the national carriers' networks for their own customers. Consumers of both large and small carriers thus benefited because these single-rate plans enabled them to travel anywhere their carrier provided service or had an automatic roaming agreement without incurring high roaming fees.

These single-rate plans were developed because the market provided incentives for carriers to negotiate mutually beneficial automatic roaming agreements. Adoption of an automatic roaming *requirement*, on the other hand, would undermine the foundation for single-rate plans. The business case for such plans is based on low roaming rates that are predictable and quantifiable, based on mutually-beneficial, negotiated agreements between carriers. Therefore, these rates can be factored into the basic rate plan and separate roaming charges can be eliminated. If the Commission adopts a rule that entitles all CMRS carriers to automatic roaming even without a mutually beneficial negotiated agreement, the intercarrier roaming revenue flows will no longer be predictable and quantifiable, thereby jeopardizing the viability of single-rate plans.

Under a mandatory automatic roaming rule, there are several reasons why carriers would no longer be able to predict and quantify the roaming charges that must be absorbed into the basic rate plan. For example, if Cingular were required to enter into a reciprocal automatic roaming agreement with every GSM carrier, it would be virtually impossible to determine how often Cingular's subscribers would roam onto other networks, because they could roam onto *any* network, including one with very high intercarrier roaming rates, even if a network with a lower negotiated rate were available. It would also be difficult to estimate the amount of roaming traffic that Cingular would have to accommodate on its own network. As a result, the net roaming traffic and intercarrier charges between Cingular and any other carrier would become much less predictable.

Moreover, if automatic roaming were *required*, the current marketplace incentives to reduce roaming costs would be eliminated. Rather than reduce roaming rates as an inducement for an automatic roaming arrangement, a carrier would merely demand automatic roaming. Absent the incentive to reduce rates, roaming costs would inevitably rise, rather than fall as they have. At some point, rising roaming cost would make it too costly to offer single-rate plans pursuant to which the carrier absorbs roaming costs. Carriers will be forced to offer plans with different rates depending upon whether the caller is "on network" or "off network," or even return to the old days, with market-by-market, carrier-by-carrier schedules of roaming rates. The reduction in differentiated pricing plans ultimately will harm consumers by removing simplicity and increasing customer costs.

B. An Automatic Roaming Requirement Will Undermine the FCC's Goal of Encouraging Facilities-Based Service and Will Inhibit Competition Based on Network Coverage

The Commission has concluded that network expansion is a critical public interest factor.⁸⁵ Thus, throughout the various automatic roaming proceedings, the Commission has properly expressed concern that an automatic roaming requirement would undermine the ability of carriers to differentiate themselves from each other.⁸⁶ If all carriers were entitled to automatic roaming, distinctions based on coverage would disappear. Consumers would be disadvantaged by a lack of product differentiation, and carriers would be unable to take credit, in marketing their services, for advantages their systems may have over others, such as geographic coverage. Instead of a variety of competitors differentiated in coverage, product quality, and features, all the competitors would appear more or less alike.

An automatic roaming requirement also would create a disincentive for carriers to expand network coverage into high cost areas. Today, a carrier may build out into a high cost area in order to achieve a marketing advantage — superior network coverage. If a competitor is entitled to “piggy-back” on the network coverage of its competitor, there is no marketing advantage.⁸⁷ If there is no competitive advantage associated with expanding coverage into an area, a carrier is unlikely to do so. Thus, given the recognized public interest benefits associated with promoting network expansion, the Commission should not adopt an automatic roaming requirement that would discourage such expansion and frustrate the goal of nationwide facilities-based service.

⁸⁵ See, e.g., *BellSouth/SBC Order*, 15 F.C.C.R. at 25480; *Cingular/AWS Order*, 19 F.C.C.R. at 21610.

⁸⁶ See *Notice* at ¶ 28; *Third NPRM*, 11 F.C.C.R. at 9474-75 (seeking comment on whether an automatic roaming requirement will adversely impact investments in network coverage); *2000 NPRM*, 15 F.C.C.R. at 21637.

⁸⁷ See *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *First Report and Order*, 11 F.C.C.R. 18455, 18463 (1996).

C. A Mandatory Automatic Roaming Rule Would Increase Costs To Consumers

Adoption of a mandatory automatic roaming rule would also be contrary to the public interest because it would inevitably result in increased costs to consumers. An automatic roaming requirement will increase the administrative and other costs shouldered by carriers in order to provide and bill for roaming service. Carriers would be required to establish business arrangements with all other wireless network operators using compatible technology and establish billing and other procedures for the additional roaming traffic on their network. They would also need to load each others' numbers on their switches, and in the case of GSM carriers, MCC and MNC data must be entered into the switch for every carrier whose customers are entitled to automatically roam on the network. Switches have limited capacity, however, and a carrier may have to purchase and install new equipment merely to accommodate the larger volume of roaming traffic resulting from more expansive automatic roaming. These costs will be borne by consumers in the form of increased roaming rates.

Mandatory automatic roaming also will increase consumer costs because certain carriers effectively will be insulated from market forces. In the absence of an automatic roaming requirement, carriers have entered into hundreds of automatic roaming agreements largely based on reciprocity. That is, carriers generally enter into a roaming arrangement if the agreement would permit their subscribers to receive service at lower rates or in areas where they previously were unable to automatically roam. Mandated automatic roaming would eliminate reciprocity by providing guaranteed roaming traffic regardless of whether both carriers benefit. This, in turn, eliminates the incentive for smaller carriers to lower their roaming rates or provide better service quality as an inducement for an automatic roaming agreement. Although certain carriers may benefit from such a requirement, consumers will face higher roaming rates and poorer service quality. Accordingly, the Commission should not mandate automatic roaming.

Mandatory automatic roaming requirements also would alter the way that intercarrier business arrangements are established. Currently, automatic roaming takes place based on the free-market negotiation of a roaming agreement based on mutual benefit. If automatic roaming becomes mandatory even where the carriers involved have not been able to agree on terms, then how are those terms to be established? Once the government has made one of the terms mandatory (*i.e.*, the provision of automatic roaming), the remainder of the terms cannot truly be set in accordance with market forces.

It would be a serious mistake for the Commission to mandate automatic roaming and thereby give one party to the business arrangements the ability to set the terms unilaterally. The alternatives are equally bad. Obviously, it would not be desirable for the Commission to act as a mediator or arbitrator for the forced entry into such “agreements,” even if it had jurisdiction to do so.⁸⁸ The Commission should not place itself in the position of routinely adjudging the parties’ good faith or the reasonableness of their roaming rates or other terms and conditions. Such a step would not only create a morass of litigation but would also replace the invisible hand of the free-market with the heavy hand of pervasive regulation.

D. An Automatic Roaming Requirement Will Undermine Service Quality

The Commission has recognized that the current competitive state of the CMRS industry, coupled with local number portability (“LNP”), has forced carriers to improve service quality in order to retain existing subscribers and attract new customers.⁸⁹ Service quality issues are particularly important in the roaming context for carriers, such as Cingular, that offer single-rate plans. Under a single-rate plan, a subscriber can place and receive calls from anywhere its

⁸⁸ Congress found it necessary to create an entire statutory framework — Section 252 — for the arbitration of incumbent LEC interconnection agreements. Notably, there is no similar statutory provision governing CMRS.

carrier provides service or where a participating roaming partner provides service. The subscriber cannot differentiate between roaming and home service. Thus, the home carrier is held responsible by the subscriber for any problems experienced while roaming.

To minimize customer dissatisfaction, Cingular must ensure that its roaming partners meet minimum quality standards. These standards require roaming partners to offer certain features and functionalities and to provide a minimum grade of service. If a carrier is unable to meet these standards, there are two options. Cingular may refuse to enter into an automatic roaming agreement or, as generally is the case, Cingular will agree to non-reciprocal automatic roaming agreement whereby the non-conforming carrier's subscribers may roam automatically on the Cingular network, but where Cingular's customers are blocked from roaming on the other carrier's network

If it were forced to enter into reciprocal automatic roaming agreements, Cingular would be held responsible by the subscriber for the services provided by the non-conforming carrier. Because the customer would not be notified that it was receiving service from another carrier, the customer would blame Cingular for any shortcomings associated with the service. Moreover, Cingular's customer contracts specify that customers will receive certain features and functionalities whenever they utilize their phone within the single-rate service area. Therefore, there is a potential breach of the customer service agreement if a customer is allowed to automatically place a call on a non-conforming network.

If automatic roaming were mandatory, Cingular and other carriers offering single-rate plans would need to revert to less-customer friendly rate plans that divide charges based on whether a call was placed "in network" or "out of network," and ultimately return to a maze of

⁸⁹ See *Tenth CMRS Competition Report* at ¶¶ 4, 132.

roaming rates depending on the market and host carrier. This would result in less product differentiation and inhibit the ability of carriers to distinguish themselves.

CONCLUSION

For the foregoing reasons, the Commission should eliminate the manual roaming rule and should refrain from adopting any additional roaming regulations.

Respectfully submitted,

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